

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 96-0512 ITC

Gross Income Tax, Adjusted Gross Income Tax

And Supplemental Net Income Tax

For Tax Period: 1992 Through 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Income Tax – Gross Income, Adjusted Gross Income and Supplemental Net Income

Authority: IC 6-8.1-10-9

Taxpayer protests the imposition of income taxes.

STATEMENT OF FACTS

The taxpayer was granted not-for-profit tax exempt status by the Indiana Department of Revenue in June of 1992. After an investigation spanning the approximate time period of July 1993 to November 1995, the Department revoked the taxpayer's Indiana Charity Gaming Annual Bingo License on an emergency basis and imposed fines totaling \$36,500 dollars as of January 11, 1996.

A hearing was held and a letter of finding was issued on February 5, 1996. In the letter of findings, the Department determined that the taxpayer was not a qualified organization, its volunteer workers were illegally paid, it used bingo proceeds illegally, it allowed a volunteer to participate in a bingo game, and it sold pull tabs that did not meet standards set by statute and regulation. Judicial review of the Department's findings and conclusions was conducted on February 26, 1996. The trial court issued its findings on March 12, 1996, finding the evidence sufficient to support all of the Department's findings. On November 20, 1996, the Court of Appeals of Indiana upheld the previous decisions held that there was no error. On February 5, 1997, the Internal Revenue Service concluded the taxpayer did not qualify for recognition of

exemption under IRC § 501(c)(3) or § 501 (c)(4). This denial was based upon the Department's 1995 investigation, the March 12, 1996 decision of the St. Joseph Superior Court, and the Indiana Court of Appeals decision on November 20, 1996. In a letter dated June 16, 1997, the Department rescinded the taxpayer's not-for-profit status effective June 1, 1992. A Letter of Findings upholding the Department's rescission was issued December 4, 1997. Taxpayer was assessed with business income taxes on revenues received through games of chance. Taxpayer protested these assessments. Additional relevant information will be provided below, as necessary.

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DISCUSSION

The auditor's assessment of gross income tax, adjusted gross income tax and supplemental net income tax stem from the Department's finding that the taxpayer was conducting charitable gaming activities illegally. The revenues received through this illegal activity were determined to be taxable business income.

At the administrative hearing taxpayer's representatives argued taxpayer was now a defunct corporation with no assets and could not pay the assessments. Taxpayer did not argue the assessments were invalid. The Department does not accept this argument as sufficient reason to cancel the liabilities. Should the taxpayer not pay the assessments, the taxpayer's officers and directors can be held personally liable.

Pursuant to Indiana Code 6-8.1-10-9(d):

The corporation's officers' and directors' personal liability includes all taxes, penalties, interest, and fees associated with the collection of the liability due the department or the county. In addition to the penalties provided elsewhere in this title, a penalty of up to thirty percent (30%) of the unpaid tax may be imposed on the corporate officers and directors for failure to take reasonable steps to set aside corporate assets to meet the liability due the department or the county.

The Department will not void the income tax liabilities against the taxpayer.

FINDING

Taxpayer's protest is denied.